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JAMES R. BROWNING

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 335

COMMERCE-PACIFIC, INC., a corporation,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITIONER'S REPLY TO RESPONDENT'S MEMORANDUM IN OPPOSITION.

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TABLE OF AUTHORITIES CITED

Cases

Phila. Storage Battery Co. v. Lee, 21 F. (2) 329 2
White v. Aronson, 302 U. S. 16 2

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1. In its attempt to distinguish the holding of the court of appeals in this case from the contrary doctrine uniformly adhered to by the Customs Court and acquiesced in by the Treasury, the respondent has departed from the record and repeated mistaken statements of the courts below.

It is misleading to state that the fishing poles here in question are fitted with "ferrules or other means by which they may be joined together." Memorandum in opposition, p. 4, this brief, p. 2. They are not fitted [illegible] any ferrule or [illegible] the sections of petitioner's poles may be joined [illegible] the normal [illegible]

Also, it is wrong to repeat the assertion of the court of appeals that the fishing poles dealt with by the Customs Court are "essentially different" from the articles involved here, in the face of the Treasury's concession that the articles are in fact "similar." [R. 86] as respondent's memorandum (p. 2) admits.

The fact is, of course, that it is the identical article which enters through customs (and is held not subject to the tariff on "fishing rods") that respondent nevertheless seeks to subject to excise tax as a "fishing rod" when it is resold in this country. The anomaly inherent in the Government's positions cannot be escaped.

2. Respondent asserts, without authority or reference other than *ipse dixit*, that "the ordinary meaning of language" supports its contention respecting the identification of the article which is taxed. That assertion ought not to prevail over trade usage: *White v. Arrow Co.*, 302 U. S. 16. It has been well stated in an excise tax case that

> "Tax laws, like all other laws, are made to be obeyed. They should therefore be intelligible to those who are expected to obey them. The command here is directed to 'manufacturers, producers and importers' of the 'articles' named. It is, because of this, a fair inference that Congress spoke to them in their own language. This means that the phrases of the law are to be given the meaning they have in the trades concerned.
>
> "Aid is . . . given by adjudications in the customs cases, because the question is essentially one of classification."

White Storage Battery Co. v. Lyeth, [illegible] D. C.

3. Denying the conflict of the decision below with *White v. Ironson*, 302 U. S. 16, the respondent asserts without support in the record that the court of appeals did not refuse to consider trade usage. The facts are: the trial court rejected evidence of trade usage and, when petitioner offered a trade catalog describing the article in question, said "I don't care what Hoegee calls it." [R. 39]. The court of appeals affirmed without expressing any different view. It is clear that both of the courts below departed from the rule of the *Ironson* case.

4. Respondent asserts that no important question is involved. This position should be contrasted with that which the Government maintained when it successfully petitioned for the writ of certiorari in *White v. Ironson*, 302 U. S. 16, No. 20, 1937 Term. Asserting a conflict of decision (which this Court is not to exist, 302 U. S. 16, at 21) the Government's petition in that case argued (p. 8) that it "should be resolved in the interests of efficient administration to the end that the Treasury and the industry may be certainly advised of the scope of the statute." We adopt that language here in a better case, where a conflict does exist, and we request that the writ of certiorari be granted as it was in the *Ironson* case.

$15,000 for the period from October 1953 to June 1956, and additional assessments are proposed for subsequent periods. The issue is one of general interest to the trade, and substantial amounts of tax are claimed. It is submitted that the question is one of importance and should be authoritatively settled by this Court.

Respectfully submitted,

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